

# Estes Valley Easements

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## OVERVIEW

This handout addresses some of the most frequently asked questions about easements. Many properties within the Estes Valley have easements and development within these easements is limited.

## WHAT IS AN EASEMENT?

Simply put, an easement is a right of use over the property of another.

Easements should describe who has a right, what that right is, and define the area where that right exists.

Documents are typically created by land use attorneys or property surveyors (sometimes both).

The most common types of easements are:

1. General utility easements. These allow all utilities, including public main lines and private service lines.
2. Sewer and water line easements. These are typically for large utility mains, and often restrict any other use besides the water or sewer line (e.g. exclusive use).
3. Electric easements. These are common for overhead and below ground electric lines. Sometimes these specify overhead lines only (e.g. aerial easements).
4. Private service line easements. These are common for water service and sewer service lines that cross a neighboring property before connection to a main line.
5. Drainage easements. These allow the conveyance and/or storage of stormwater, and are typically related to historic drainage patterns

6. Vehicular access easements. These are for driveways, and are one of the most common types of easements.
7. Non-motorized trail easements. These are dedicated for public trail use, often well in advance of trail construction.

## RECORDED OR PRESCRIPTIVE?

Easements come in two varieties: recorded and prescriptive.

Recorded Easements are those that are formally recorded, either on a plat of subdivision or through a separate document.

Recorded easements have many benefits to the property owner and easement holder.

For example, once an easement is recorded the location and width are formally established and will show up in title searches. This differs from prescriptive easements.

*Because of the benefits of recorded easements, Community Development policy is to formalize prescriptive easements whenever possible. Sometimes these are recorded with an easement document, and sometimes they are documented with plat maps.*

Prescriptive Easements are those that exist through historic use at least 17 years. Common examples include utility lines or driveways that cross a neighboring property.

These easements are not formally recorded, and may surprise property owners with unexpected maintenance or replacement of unknown utility lines.

Prescriptive easements require adjudication through a court of law. Because of this,

staff recommends that property owners work together to either record an easement or remove the encroachment.

## **WIDTH**

Utility easements should be at least 20 feet wide. These often straddle a property line, with 10 feet on each side.

If you would like to consider a narrower easement, you will need to obtain written approval from all public utility providers that have a right of use (e.g. water department or sanitation district).

Private streets require access easement the same width as public streets. Widths vary depending of traffic volume.

## **CAN I BUILD IN AN EASEMENT?**

Probably not. Building permits that show an encroachment into an easement will not be approved without written approval from the holder of that easement.

### *What is allowed in easements?*

- ✓ Improvements specified in the easement document, such as utilities.
- ✓ Driveways are typically permitted in public utility easement as long as they minimize the encroachment.
- ✓ Fences are typically allowed in easements.
- ✓ If access is needed to the easement, the holder of the the easement can remove the improvements without compensation to the property owner for the improvement.

### *What is not allowed in easements?*

- ✗ Structures, including building eaves, window wells, or architectural projections.
- ✗ Trees and shrubs. Existing trees and shrubs can remain but may be removed if access to the easement is needed.
- ✗ Detention facilities, such as detention ponds (except in specified drainage easements).
- ✗ *Exclusive Easements.* Exclusive easements means only the holder of the easement has the right to use it for anything.

If you are unsure whether the work you are considering is permitted in an easement, please contact the utility providers who have right of use. These typically include the water department, light and power department, and sanitation districts.

## **HOW DO I GET RID OF AN EASEMENT?**

Vacating an easement can be difficult, and requires consent from those who have a right to use the easement.

For example, if your neighbor's driveway crosses part of your property, you will need to work with your neighbor to arrange an alternative location that will satisfy their needs.

Vacating public easements requires written consent from all affected utility providers.

You are responsible for gathering required signatures.

After you gather the signatures, you will need to petition either the Town Board or Board of County Commission to formally vacate the easement.

Please contact the Community Development Department with questions. See the "Vacating Public Easements and Rights-of-Way" handout.

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